

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

**ATLANTIC AND PACIFIC TELECOM,
d/b/a AFL NETWORK SERVICES**

Employer

and

Case No. 5-RC-15362

COMMUNICATION WORKERS OF AMERICA¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. Atlantic and Pacific Telecom, d/b/a AFL Network Services (the Employer), a North Carolina corporation, is engaged in the business of engineering, furnishing and installing central office equipment at its Richmond, Virginia location.

¹ The Employer's and Petitioner's names appear as amended at the hearing.

During the past twelve months, a representative period, the Employer purchased and received products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Virginia. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

Communications Workers of America (the Petitioner or Union) seeks to represent a unit of full-time and regular part-time employees performing installation and warehouse functions in the Richmond, Virginia area, including but not limited to, installers and warehouse employees;² but excluding field services employees, other employees, guards, and supervisors³ as defined by the Act. There are approximately 35 employees in the petitioned-for unit. The parties disagree as to the composition of the unit and to its scope. There is no history of collective bargaining between the parties for these employees.

The Employer presented as its witness Mid-Atlantic president Edward Elliott. The Petitioner presented as its witness former employee Jim Moore.

ISSUES

The issues raised in the instant proceeding are the following:

- 1) whether the petitioned-for single-location unit is appropriate;
- 2) whether employees to certain additional classifications share such a close community of interest with the employees in the petitioned-for unit that they must be included in the unit; and
- 3) whether installation supervisors are supervisors as defined in Section 2(11) of the Act.

POSITIONS OF THE PARTIES

The Petitioner contends that the petitioned-for single-facility unit, consisting of approximately 35 employees, is an appropriate unit. The Petitioner asserts that although there is some integration of operations among the Employer's facilities, those facilities are geographically dispersed at various locations in six different States, each facility has a

² Despite record evidence that Richmond's sole warehouse facility will be closed within a few months, resulting in the layoffs of three material handlers and one manager, both parties agree that these material handlers should be included in any unit found appropriate.

³ At the hearing, the parties stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Ed Foley, director of operations for Eastern and Central Virginia; T. Kelly, vice president of business development; Andy Reynolds, installation supervisor; Donnie Breedon, installation supervisor; Todd McGregor, warehouse manager; and Red Williams, manager.

distinct identity, and there is a great deal of local autonomy over day-to-day operations, including with respect to direction and assignment of work, supervision, management, discipline, layoffs, and terminations. Further, the Petitioner asserts that while new region-wide policies have been recently implemented, these are mere guidelines and actual decisions are made locally with little or no input from a regional or other centralized group.⁴ The Petitioner also contends that the installation employees in the proposed unit are technical employees who have received substantial technical training and share a community of interests. With respect to the installation supervisors, the Petitioner contends that they are not supervisors as defined in Section 2(11) of the Act, but are employees properly included in the unit.

The Employer contends that because of the nature of the Employer's business operations and the community of interest between employees in all areas within its Mid-Atlantic region, the only appropriate geographic scope for bargaining is the Mid-Atlantic region, comprised of six states – Delaware, Maryland, Virginia, New Jersey, Pennsylvania, and West Virginia. The Employer asserts that only a multi-facility unit is appropriate because employees at all facilities have the same benefits, working conditions, skills, and work functions. Further, the Employer asserts that the unit should include the job classifications of estimating, engineering, and quality control because the employees in these classifications possess a community of interest with the installer employees. It contends that installation supervisors are supervisors as defined in Section 2(11). The total number of employees in the Employer's proposed unit is 322.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing and in brief, I find that the single-facility presumption has not been rebutted. I further find that the petitioned-for unit is an appropriate unit. Finally, I find the evidence is insufficient to establish that installation supervisors are supervisors within the meaning of Section 2(11).

THE EMPLOYER'S OPERATION

As noted above, the Employer engineers, furnishes, and installs central office transmission and power equipment to major telephone service providers in the public network. Following the merger of two predecessor companies, a consolidation of the two companies for the Mid-Atlantic region began during the summer and fall of last year which has not been completed. The Mid-Atlantic region's main customer is Verizon.

According to record evidence regarding the flow of work,⁵ after the Employer receives a request for installation from a telephone company customer, a field engineer goes to the telephone company's central office (referred to as "central offices" and which

⁴ In addition to its petitioned-for unit, the Petitioner has expressed a willingness to proceed to an election in a unit of warehouse and installation employees employed at the Employer's Richmond and Chesapeake offices, or a "broad Richmond inside and outside technical unit," including the engineers.

⁵ The job duties of each classification are the same region-wide.

is the actual job site) to meet with a representative of the customer in order to define the specific scope of work for the telephone equipment to be installed and to gather the necessary information such as measurements. The field engineer then reports this information to a detail engineer,⁶ who prepares a detailed “spec” for the installation. This spec includes the scope of the work, instructions to the installer, and the specific material to be used on the job. Estimator employees then use the field engineer’s report to create a bill to order material and estimate the required labor hours for the installation in order to calculate the firm price quote to be given to the customer. The actual installation is performed by two types of installers on the jobsite: transport or toll installers, who run cables, terminate cable, mount bays, erect ironwork, and perform other related duties; and power installers, who install backup DC power equipment and batteries. Quality control specialists or auditors go to the jobsites to conduct a visual inspection of the quality of the installation workmanship, and to assure that the jobs are being done in accordance with specs.⁷ Material handlers work in warehouses receiving and ordering materials, as well as deliver and pick up materials to and from specific jobsites.⁸

In addition to preparing specs, lead engineers, who are senior and more technically competent engineers, review specs for accuracy and completion before they are sent to the customer. There are a total of six to eight lead engineers working in Salem, Virginia; Manassas, Virginia; Glen Burnie, Maryland; and Richmond, Virginia. Each reports to the engineering manager and is paid roughly the same as the engineers, perhaps a dollar extra per hour.⁹

GEOGRAPHIC COMPOSITION OF MID-ATLANTIC REGION AND ORGANIZATIONAL STRUCTURE

The Mid-Atlantic region’s president, Edward Elliott, operates out of “headquarters,” located in Salem, Virginia.¹⁰ In addition, there are about 20 facilities in

⁶ Neither detail nor field engineers are required to have an engineering degree or any special certification or specialized training before being hired into these positions.

⁷ Inspections or audits are performed on about 25 per cent of on-going jobs, depending on resources at a given time, and all finished jobs.

⁸ The job skills of material handlers include physical lifting or hoisting, counting, reading and basic computer skills.

⁹ The Employer contended at the hearing that the lead engineers are not supervisors as defined by Section 2(11) of the Act because they possess no supervisory authority. When asked for the Petitioner’s position with respect to the status of lead engineers, Petitioner’s counsel indicated that the only information it had was that the Richmond lead engineer, Raymond Heath, did not possess any 2(11) supervisory authority and, therefore, is not a supervisor as defined in the Act. As for lead engineers located outside of Richmond, neither party has contended, and the record fails to establish, that any of these individuals are 2(11) supervisors. Further, the parties stipulated at the hearing that lead installers are not statutory supervisors and should be included in the unit.

¹⁰ Accounting, procurement, estimating, and human resources functions for the entire Mid-Atlantic region are handled at the Salem headquarters. Also at this location are

the region, some of which are in the process of being closed and/or consolidated into other facilities. These 20 facilities handle training, office, warehouse and distribution, or engineering functions, or a combination thereof.

The Mid-Atlantic region consists of the following territories: Central Maryland, which covers the Maryland Eastern Shore and Prince George's County, Maryland; Central Virginia, which covers the area surrounding Richmond, north of Fredericksburg, west to about Charlottesville, and east to a point between Norfolk and Richmond; Delaware, which consists of the entire State of Delaware; Eastern Virginia, which covers the Eastern Shore of Virginia, as well as the Tidewater area; Pennsylvania, which covers the entire State of Pennsylvania; West Virginia, which covers the entire State of West Virginia; and New Jersey, which covers the northern part of the State, from New Brunswick to the western part of the State.¹¹ In terms of the geographic distances between facilities, the record revealed that Chesapeake is approximately 180 miles from Manassas, and approximately 100 miles from Richmond. From Salem, it is approximately 350 miles to Camden, and approximately 240 miles to Glen Burnie.

The Richmond central or main office is headed by the director of operations, Ed Foley, who oversees the operations for Central Virginia. Reporting to Foley is an installation manager or an area manager, Red Williams, who supervises the installation supervisors at this location.¹² A warehouse manager, an engineering manager, and an estimating department are also at this location.¹³

The main facility for Maryland is located in Glen Burnie. The director of operations for the States of Maryland, Delaware, and New Jersey is Gary Trainer, who is physically located in Glen Burnie. Also at the Glen Burnie office are installation managers, an engineering manager, and a warehouse manager.

The main facility in Delaware is located in New Castle, which, as of the time of the hearing, was slated to service New Jersey as a consequence of the Camden office's impending closure. An area manager, installation supervisors, and warehouse managers are located at this office.

Neither the Pennsylvania nor the West Virginia territory contains a facility or home base. According to Elliott's testimony, installation work for the territory located in Pennsylvania and West Virginia is performed by installers who originate out of the above-mentioned Mid-Atlantic home offices.

detail engineers, who can work on jobs from Delaware, Maryland, or Virginia, as well as an engineering department.

¹¹ The facility that has serviced this area is located in Camden, New Jersey, and was in the process of being closed as of the time of the hearing.

¹² Installation supervisors, whose job duties are discussed more fully below, are typically responsible for several jobs that are in progress at the same time.

¹³ As of the hearing, estimating for the Mid-Atlantic region was performed at only two locations: Richmond and Salem.

The director of power operations is Sal Accardo, who oversees the entire Region's Power Services Group.¹⁴ He is physically located in Salem, Virginia. Also located in Salem is the director of the engineering and support services, Dave Perrin.¹⁵

The Northern Virginia area is overseen by operations director Shannon Quillen, who works in the main office, located in Manassas. Reporting to Quillen are two installation managers and a customer service representative. An engineering manager and a materials manager are also located at this office.

In Chesapeake, Virginia, there is a main office with an area manager that works closely with director of operations Ed Foley. In addition, there are several installation supervisors, a warehouse manager,¹⁶ and an engineering manager.

The Employer's quality department for the entire region is headed by P. Michaux, vice president of quality and training, who is in Richmond. Reporting to him are quality specialists or auditors, an administrative assistant, and instructors. The record also established that this department, by design, is independent of the installation department in order to preserve the integrity of the quality reports or audits. Thus, there is a separate reporting chain.

In Richmond, there are installation employees, clericals, engineers, and, as of the time of the hearing, warehouse employees. As noted above, estimating is performed in Richmond as well.

EMPLOYEE JOB FUNCTIONS AND WORK LOCATIONS

The quality control specialists or auditors conduct a visual inspection of the work at the jobsite, where they spend about 80 per cent of their work time. The auditors then complete an audit report that lists any deficiencies in the installation work. There are about eight full-time auditors and about a half a dozen part-time auditors, who are physically located in Manassas, Glen Burnie, and New Castle. They are rarely temporarily transferred outside their home area.

Detail engineers report to a single office location where they perform their daily work. Detail engineering work is performed at the following facilities: Salem, Lynchburg, and Richmond, Virginia; and Moorefield Park, located in Glen Burnie, Maryland. Field engineers spend a significant amount of their time in the field, at the customer's central office.

¹⁴ Power Services entail the installation of secondary power within a customer's office, such as DC power, rectifiers, and batteries carrying secondary distribution.

¹⁵ Support services refer to drawings, engineering methods, and estimating.

¹⁶ The warehouse manager at the Chesapeake office and the materials manager at the Manassas office perform the same duties.

As noted above, material handlers work in one of the distribution centers.¹⁷ There they receive material that is purchased from vendors and enter it into the computerized inventory system. In addition, they receive a pick list that would describe the materials designated to go to a specific job, which they then stage and deliver to the appropriate jobsite.

While installation employees are assigned to a “home base” or operations area, they do not report to a particular location on a daily basis. Rather, they travel from jobsite to jobsite to perform installation work. These jobs typically last from two to six weeks. Installation employees regularly visit the warehouse in the course of their normal duties.

EMPLOYEE TRANSFERS AND INTERCHANGE

At the hearing, the Employer presented evidence that showed instances in which installers were assigned to work at jobsites outside their assigned operations area during a given time period. When installation employees are reassigned or “temporarily transferred” in such a manner, they do not report to their supervisor at their home office. Rather, they become part of the new area’s office for the duration of the job. With respect to timekeeping, the temporarily transferred employee’s time spent on a particular job would be charged to a designated project number assigned to the area in which the work was being performed.¹⁸

The Employer’s counsel concedes on brief that installers, approximately 200-210 in total, spend the majority of their time on jobsites located in general proximity to their home base. The Employer presented evidence that from September 1, 2001, to February 28, 2002, 198 installers worked outside their home areas, but there was no evidence showing what percentage of their work time was spent outside their home area. From September 1, 2001, to March 15, 2002, there were 1,761 instances where installers performed work outside their own home base. However, the Employer provided no evidence showing the total number of instances in which employees worked within their home base area for the same time period. Of the Richmond installers, 30 worked outside their home area on 98 jobs during the past six months. During the same period of time, 41 installers home-based at other facilities worked on 40 jobs in the Richmond area. In its brief, the Employer provides only six specific instances in which employees from different home areas worked side-by-side.

¹⁷ As of the time of the hearing, there were material handlers at the distribution centers in Chesapeake, Manassas, Glen Burnie and New Castle. While there are smaller facilities used for storing materials in Salisbury, Maryland, Camden, New Jersey; and Yorktown, Virginia, no full-time material handlers work at these locations.

¹⁸ Time keeping is a central function that is handled by the accounting department. All employee checks are distributed from Pittsburgh, Pennsylvania, or are electronically deposited.

At the hearing, in response to the Hearing Officer's questions, Mid-Atlantic president Elliott was unable to provide the percentage of the Employer's yearly 3,000 projects that are performed without the use of temporary transfers. Nor could he provide the percentage of times in which an installer is temporarily transferred to a jobsite located outside of his home base. According to Elliott, deciding how installation resources should be reallocated in order to meet job needs is centrally determined, and is determined by the amount of work that exists at a particular time, where the work is located, and existing resources. Union witness, Jim Moore, testified that in the last two years, while employed by the Employer as a power installation supervisor, he spent about 30 per cent of his time working outside of his home area of Richmond.

Elliott testified that he was aware of 17 employees in the past year or so that permanently transferred from Salem to Manassas as a consequence of the closure of the operations group in Salem. In addition, Elliott testified that he was aware of several installation employees who permanently transferred to Manassas.¹⁹ These transfers were made in response to the employees' desire to relocate. Employees who receive permanent transfers retain the same index skill level, date of service, date of hire, and benefits.

HIRING AND TRAINING

Hiring for the entire Mid-Atlantic region is handled in accordance with the Employer's centralized policy, which was effective January 1, 2002. Job vacancies for the Mid-Atlantic region are posted in the two human resources offices: Salem and Richmond. In addition, the jobs are posted in each of the job locations in which employees work throughout the region.²⁰ Human resources is responsible for the administrative functions relating to the employee selection process, such as collecting the employment applications and sending them to the hiring manager, generally a local area manager, who would be responsible for screening, interviewing, and selecting the individual to fill the job vacancy. The hiring manager also makes a recommendation with respect to the rate of pay to be offered,²¹ which is reviewed by human resources. If the recommended pay rate were to be outside of a broad, prescribed pay range, human resources would flag the pay rate and bring it to the attention of the Mid-Atlantic president. Once a candidate is selected, the human resources department ensures that the appropriate offer letter is sent to the successful candidate.

Training is conducted at one of two training facilities (which as of the hearing, were slated to be consolidated into one location, located in Manassas). These facilities contain classrooms where instructors instruct employees. In addition, these facilities

¹⁹ The record does not say from where the employees originated prior to the transfer.

²⁰ Jobs are not posted outside the six-state region. Vacant jobs may be locally advertised in newspapers.

²¹ The hiring manger would consider factors such as the prospective employee's prior experience, education, and training in determining the precise amount of the offer.

contain a “hands on” laboratory facility, which resembles a “miniature central office” where “hands on” training can occur. If an installer employee is hired with no telephone background, he or she goes through an intensive four-week basic installation course before going out on an actual job. Material handlers, on the other hand, receive minimal training. They receive an initial orientation, a tour of the warehouse, and are taught how to use the computer system.

COMPENSATION, WORK SCHEDULES, AND OTHER WORKING CONDITIONS

With respect to pay rates, while president Elliott was unable to provide current, pay rates for each of the job classifications,²² he testified that the range of hourly pay for the classification of engineers was higher than that of installers. However, because this range is rather broad, and takes into account an employee’s index skill level, a new detail engineer may receive a lower hourly wage than a very experienced installer. In addition, the rate of pay is affected by cost of living allowances made for the geographical area in which an employee works. According to Elliott, auditors, like engineers, generally “rise up out of the ranks” out of installers.²³ They are paid anywhere from the upper-teens to the mid-20s per hour. All transport installers, lead transport installers, power installers, lead power installers, estimators, field engineers, detail engineers, lead engineers, material handlers, and quality control specialists receive the same fringe benefits, such as holidays, medical benefits and health insurance, vacations and bereavement leave.

In Richmond, installers work day shifts, as well as during the hours between 5 p.m. and 8:00 a.m. Engineers, estimators, and auditors do not work these “off-hour” shifts.

LABOR RELATIONS

Employees in the Mid-Atlantic region come under the same labor relations policies, which area managers are constrained to follow. These policies include per diem

²² Prior to the merger of the two predecessor companies, Elliott was president of Atlantic and Pacific Telecom, based in Salem. At that time, the hourly pay range for field engineers was typically \$20 to \$30. For technicians, it ranged from \$10 to the “upper 20s,” according to Elliott.

²³ Union witness Jim Moore testified that auditors or quality control employees come from the installer ranks “to a limited degree.” On direct examination, he provided several examples of employees who were hired into quality control and engineering positions with no installation experience. He provided an example of a current quality control employee who did not work previously as an installer; however, he conceded on cross-examination that all other quality control employees were former installers. As for engineers, Moore testified that most of the engineers employed by the Employer originated from Verizon, the Employer’s customer, and that not all installers become engineers.

and mileage, the disciplinary process, termination policy,²⁴ job posting policy, paid time off, performance assessment, layoffs/reduction in force, and the new hire policy. In addition, the same company handbook applies to all of the employees working in the Mid-Atlantic region.

Area managers grant vacation requests. If an employee cannot come to work or needs to leave early due to an emergency, the employee speaks with their supervisor or manager.

ANALYSIS

UNIT SCOPE

Section 9(b) of the Act states the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof....” The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-23 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Id.* at 41. The factors that the Board examines in making this determination are centralized control over daily operations and labor relations; extent of local autonomy; similarity of skills, functions, and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999);

²⁴ There is some record evidence, albeit limited, of instances in which Mid-Atlantic employee discharge decisions, if not centrally made, were made with involvement from human resources and/or non-local management. Even in these instances, however, the local area manager or supervisor would generally initiate the discharge process by writing up the employee and would communicate the discharge decision to the employee.

Rental Uniform Service, 330 NLRB 334 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, supra. Further, as the Board noted in *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-plant unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

I find that the Employer has failed to present evidence sufficient to overcome the presumptive appropriateness of a single-facility unit. Although the Employer's operation is centralized with respect to general personnel and labor relations policies, the Board has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. *Neodata Product/Distribution*, 312 NLRB 987, 989 fn.6 (1993). The Board must balance the needs of employee organizational activities against possibly competing interests of an employer. While an employer has an expectation of "reasonably adequate protection from the disruptive effects of piecemeal unionization," *NLRB v. Pinkertons, Inc.*, 428 F.2d 479, 485 (6th Cir. 1970), the Board must also "assure to employees the fullest freedom in exercising the rights guaranteed by the Act." *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 139 (1962).

The evidence clearly demonstrates that the employees in the petitioned-for unit are a distinct and identifiable group of employees who meet and interact with one another, and their own managers, on a regular, daily basis. The record further reveals that the multiple levels of local management at each home area office have virtually total autonomy over labor relations, including over matters such as hiring, granting of time off, and day-to-day supervision. The Employer's local supervisors and area managers are responsible for directing the employees' work on a regular, day-to-day basis and for granting time off due to illness or vacation. Local managers give job assignments to the installation supervisors, who then relay this information to the installation employees. In addition, local managers can initiate employee discipline. With respect to hiring, generally a local area manager is responsible for screening, interviewing and selecting the individual to fill the job vacancy. This manager considers factors such as prior experience, education and training in determining the recommended pay rate for a prospective employee. Only if this recommended pay rate is outside of a broad, prescribed pay range would human resources intervene. Finally, the evidence established that variances in pay rates exist among the home area offices throughout the Mid-Atlantic region due to cost of living allowances. This significant involvement of local managers in a variety of personnel and labor relations matters demonstrates meaningful local autonomy and participation in matters directly affecting the petitioned-for employees' work environment. See *Rental Uniform Service*, 330 NLRB 334 (1999). The evidence fails to show that employees at each of the facilities have lost a separate identity or that their community of interests is overwhelmingly merged within a broader unit. While a broader unit, if sought, may also be appropriate, the Employer has the burden of showing that the petitioned-for unit is inappropriate.

The Employer further failed to rebut the single-facility presumption by a showing of significant employee interchange. Although the Employer presented at hearing instances of temporary transfers, the Employer presented no evidence showing what percentage of the employees' work time was spent outside their home area. Nor is there evidence showing the percentage of the total number of jobs involving temporary interchange. Without such information, the Employer's data lacks any context and, thus, is of little evidentiary value. *New Britain Transportation*, supra at 398. Given the fact that the Employer has approximately 3,000 projects in the Mid-Atlantic region in a year, absent specific information regarding employees from different home areas working side-by-side, the record evidence is insufficient to establish any consistent, meaningful contact between transferred and non-transferred employees and supervisors. Thus, I cannot find that the evidence presented by the Employer has destroyed the individual identity of the petitioned-for single location bargaining unit nor effectively merged the region-wide facilities into an overall, comprehensive bargaining unit.

Assuming arguendo that employees spend thirty percent of their time outside their area home area, as Jim Moore testified, that factor alone does not support a finding that the single facility presumption has been rebutted. As noted above, there is local autonomy in each of the home area offices over labor relations, including over matters such as hiring, granting of time off, and day-to-day supervision, supporting the conclusion that a single-location unit is an appropriate bargaining unit. Additionally, the considerable distance between the home area offices must also be considered. This geographic separation, while not determinative, gains significance where there are other persuasive factors supporting the single-facility unit. *Bowie Hall Trucking*, supra at 43. While employees within the same job classifications throughout the Mid-Atlantic region share the same skills and perform the same job functions, these factors are of much less significance given the physical distance between the facilities. Furthermore, Moore testified that his team stays together when it goes out of the home area, which minimizes the interaction with employees from other areas.

The instant case is distinguishable from *Oklahoma Installation Co.*, 305 NLRB 812 (1991), cited by the Employer in its brief. That case does not involve the appropriateness of a petitioned-for single facility unit. Rather, it involved a petitioned-for unit of the employer's construction work in three counties. The Board found that the record was insufficient to establish the likelihood of future work in two of the counties so as to warrant inclusion of the counties in an appropriate unit.

Similarly, *Alley Drywall, Inc.*, 333 NLRB No. 132 (2001), *Technology Service Solutions*, 332 NLRB No. 100 (2000), and *Acme Markets, Inc.*, 328 NLRB 1208 (1999), also cited by the Employer, are all distinguishable from the instant case. In *Alley Drywall, Inc.*, the issue involving the petitioned-for unit was whether the Regional Director had properly concluded that the petitioned-for unit of all plasterers of the employer was an appropriate unit in light of the parties' 8(f) bargaining history. The underlying representation proceeding in *Technology Service Solutions* (unofficially reported at 149 LRRM 1302) involved a situation where there was no local facility on which to support any analysis based on the single facility presumption, and the Board

therefore found the smallest appropriate unit to be region-wide. Obviously, the facts of the instant case are totally opposite.

In *Acme Markets, Inc.*, the petitioner union had sought to represent all pharmacy managers, staff pharmacists, and “undistributed” pharmacists employed by the employer in all of its pharmacies Pennsylvania, Delaware, and Maryland. The Regional Director found that the petitioned-for unit was not an appropriate unit. Because the petitioner had expressed a willingness to proceed to an election in any unit found appropriate, the Regional Director directed an election in three separate statewide units consisting of all pharmacies in Pennsylvania, in Delaware, and in Maryland. Reversing the Regional Director, the Board found that a four-state, employer-wide unit (including Pennsylvania, Delaware, Maryland, and New Jersey) to be appropriate because there was no basis for finding the statewide units to be appropriate. In that regard, although it was clear that the employees in the originally petitioned-for unit shared a significant community of interest, the record failed to show that their community of interest was distinct from the community of interest they shared with the employees of the employer’s New Jersey stores. Having found both the petitioned-for unit and the Regional Director’s alternative unit to be inappropriate, the Board concluded that an employer-wide unit was the only one of the alternatives under consideration that would be appropriate.

In light of the foregoing, I find that a unit limited to the employees in the petitioned-for unit to be a presumptively appropriate single-location bargaining unit. *J&L Plate*, 310 NLRB at 429.

UNIT COMPOSITION

As for the composition of the unit, I find that the petitioned-for unit, seeking all employees performing installation and warehouse functions, to be an appropriate unit. The Employer takes issue with the fact that the Petitioner sought to include warehouse employees, but excluded other classifications that it contends have much more community of interest with the installers than warehouse personnel, such as estimators, field engineers, detail engineers, and quality control specialists.²⁵ I disagree.

The warehouse or material handlers and installer employees are among the lower-paid, less experienced employees of the Employer, and their job functions are significantly physical in nature, as opposed to those of the engineers and quality control specialists. Notably, installation employees, who may have little, if any, installation experience when hired,²⁶ regularly interact with the material handlers when material

²⁵ Neither party contends that the warehouse employees should be excluded from the petitioned-for unit or any other unit that may be found to be appropriate.

²⁶ While it is true that inexperienced installation employees generally undergo a four-week training course and material handlers receive no comparable training, installation employees are not “technical employees,” contrary to Petitioner’s repeated characterization of them as such. These employees’ work does not involve the use of independent judgment usually acquired in colleges or technical schools or through special

handlers perform the delivery and pick-up of materials needed for a particular job. As noted above, the record also demonstrates that installation employees regularly visit the warehouse in the course of their normal duties. The record does not establish the same level of regular interaction between the installation employees and other above-mentioned classifications.

While installation employees and material handlers perform different job functions under different supervision, and receive different rates of pay, I do not find that these factors warrant a finding that quality control employees and engineers must also be included in the unit.

Based on the foregoing and the record as a whole, I find that the petitioned-for, single-facility unit is an appropriate unit.

INSTALLATION SUPERVISORS²⁷

As noted above, the parties stipulated that two installation supervisors were 2(11) supervisors because these individuals exercised some or all of the indicia of supervisory authority, and should therefore be excluded from the unit. Despite this stipulation, the Petitioner indicated later in the hearing that it disagreed with the Employer's position that individuals employed in the classification of installation supervisors are statutory supervisors.

The Employer contends that installation supervisors assign work, grant time off, transfer employees, discipline employees, and make recommendations with respect to hiring and firing decisions.²⁸ The evidence established that installation supervisors (also referred to as "orbit supervisors," a title not used in the Richmond area) are responsible for overseeing several ongoing jobs at the same time. The Employer's sole witness, Mid-Atlantic president Elliott, testified that the installation supervisors in Richmond share the same authority as other installation supervisors in other parts of the region. He went on to give conclusory, general testimony that installation supervisors direct the installers' day-to-day work activities and have the authority to bring up disciplinary issues, if necessary. When pressed on cross-examination, Elliott admitted that installation supervisor could not fire anybody directly on the spot, but would instead conform with the uniform written disciplinary process, which involved consultation with human resources, the installation manager (who would conduct an investigation), and the installation supervisor. While it is Elliott's testimony that an installation supervisor could

courses. *Barnert Memorial Hospital Center*, 217 NLRB 775, 777 (1975). Further, there is no evidence that the installation employees have to be licensed or certified, or pass any exams.

²⁷ Neither party addressed in its brief whether "installation supervisors" are supervisors as defined in Section 2(11).

²⁸ The Employer did not object to the Union's raising of this issue. Nor did it request an adjournment or additional time to prepare to litigate this issue.

write up an employee for a discharge, Elliott did not know if such a scenario occurred in Richmond.²⁹

Union witness Jim Moore, a power installation supervisor with over 10 years of experience at the time of his discharge,³⁰ testified that after he received job assignments from the installation manager, he relayed this information, including the work schedule, to the members on his crew, who were generally less experienced than Moore. Once on the job, Moore made job assignments based on the employee's skills, preferences, and qualifications. In his absence, the lead installer or senior employee on the job would exercise the same authority.

According to Moore's testimony, he spent about 90 per cent of his time on jobs working with his hands and tools. The balance of his time was spent completing paperwork, such as "in-progress" reports, and directing the workforce, who, by Moore's own admission, reported to him. Moore, in turn, reported to the power installation manager, with whom he was capable of being within telephonic contact while on the job.

As for discharges or recommendations regarding adverse action, Moore testified that in his two years as installation supervisor, he never fired anyone.³¹ However, he admitted that he could send an employee home if an employee was inebriated, in a near fight, or had committed an egregious safety violation. While he testified that he could report probationary employees who were not "making it" in order to "get rid of them," the record is devoid of any instance in which such recommendations were followed on the basis of Moore's or any other installation supervisor's recommendation.

Moore could grant time off if "a job allowed it," or if an employee had an emergency need to leave.³² By contrast, a vacation request had to be approved by management. Moore had no authority to approve overtime, which had to be approved by the vice president or the manager.

While the evidence demonstrates that Moore recommended installation employees for promotion to engineering positions and for pay increases, the record failed to show what, if any, role Moore's recommendation played in the Employer's granting of such promotions or pay increases. Nor was there any documentary evidence introduced by the Employer at the hearing showing the specific circumstances surrounding such situations.

²⁹ The Employer failed to present at hearing any documentary evidence showing instances in which installation supervisors played any role in any disciplinary matters.

³⁰ Moore's discharge is the subject of a pending unfair labor practice charge.

³¹ Moore was permitted to actually advise an employee of an upper management decision to discharge the employee.

³² No specific examples of this, however, were adduced at hearing.

ANALYSIS

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. Mississippi Power Co., 328 NLRB 965, 969 (1999), citing Ohio Power v. NLRB, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical or perfunctory manner does not confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677 (1985). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Kentucky River Community Care, Inc., 523 U.S. ___, 121 S.Ct. 1861, 167 L.R.R.M. 2164 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. New Fern Restorium Co., 175 NLRB 871 (1969).

As discussed above, early in the hearing the parties stipulated to the 2(11) status of two installation supervisors: Donnie Breeden and Andy Reynolds.³³ Notwithstanding this stipulation, the parties litigated the status of the installation supervisors. Because of the conflict that exists between this stipulation and testimony adduced at hearing with

³³ The record is silent as to the number of installation supervisors employed in the Richmond area.

respect to the installation supervisors, I shall direct the installation supervisors to vote under challenge.

CONCLUSION AS TO THE UNIT

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at the hearing and in brief, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time transport (toll) installers, lead transport (toll) installers, power installers, lead power installers and material handlers employed at the Employer's Richmond, Virginia location; but excluding estimators, field engineers, detail engineers, lead engineers, quality control specialists, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **COMMUNICATIONS WORKERS OF AMERICA**.

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health*

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Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **MAY 3, 2002**.

Dated APRIL 19, 2002

at Baltimore, Maryland

/s/STEVEN L. SHUSTER
Regional Director, Region 5



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